APPENDIX A

DEPARTMENT OF LABOR

DIVISION OF PUBLIC CONTRACTS

WASHINGTON

IN REPLY REFER TO
AD:rsh:zls

March 18, 1943

Mr. Douglas Hatch
Attorney at Law
Southern Building
Washington, D. C.

Dear Mr. Hatch:

This is in reply to the series of questions presented in a memorandum dated February 11, which you handed to Mr. Haslam of this Department.

The first question is whether the Public Contracts Act is applicable to your client which manufactures a special item known as K-1 Biscuit which is a component part of an Army Ration. In connection with this inquiry it is stated that your client receives purchase orders for this biscuit from various companies holding government contracts for the furnishing of a complete Ration. These companies, it is stated, procure from various suppliers the components of the Ration and assemble it and effect delivery of the assembled Ration to the government.

It is my understanding from information obtained from the War Department that the principal contracts for vari-

ous types of assembled Rations are made subject to the Public Contracts Act. It is my further understanding that the primary contractors are obliged to procure from certain designated sources the various components of the Rations that are not manufactured by the primary contractor. The manufacturers of the components are in turn required to produce commodities meeting the particular specifications of the War Department and the award of a contract for the assembled Ration is for the purpose of implementing the procurement program.

In view of the fact that the companies manufacturing the component parts for the Ration are required to comply with the specifications issued by the War Department in the manufacture of the components, this Department has taken the position that the manufacturers of the components occupy a position in the nature of a "substitute manufacturer" as that term is used in the Rulings and Interpretations issued under the Public Contracts Act. Under these circumstances the primary contractors will be obliged to see to it that any work performed by the suppliers of the components upon contracts that are subject to the Public Contracts Act is performed in accordance with the stipulations of the contract, including the stipulations of the Public Contracts Act.

The second question presented is whether the Public Contracts Act applies to a so-called purchase notice agreement that is submitted by your client to the War Department. This purchase notice agreement sets forth the prices of articles your client has for sale and those articles and the price listings are distributed by the War Department to the various Quartermaster Offices in a Contract Bulletin.

The Quartermaster Offices in turn issue purchase orders to your client for any quantity desired.

I understand from the War Department that the so-called purchase notice agreement is not regarded as a contract but that any orders filled in accordance with the terms of the agreement are contracts. Any such orders in amounts in excess of $10,000 must be made subject to the Public Contracts Act and performed accordingly.

A third question is whether Army Post Exchanges are regarded as agencies or instrumentalities of the government under Section 1 of the Public Contracts Act.

Such Exchanges are instrumentalities of the government within the meaning of Section 1 of the Public Contracts Act and any contracts awarded by a Post Exchange, if for an amount in excess of $10,000, must contain the stipulations of the Public Contracts Act.

Very truly yours,

/s/ Wm. R. McComb
Wm. R. McComb
Deputy Administrator